

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

IN THE MATTER OF:

THE WEST LIBERTY COMMUNITY  
SCHOOL DISTRICT,

Petitioner,

vs.

PUBLIC EMPLOYMENT RELATIONS  
BOARD AND WEST LIBERTY  
EDUCATION ASSOCIATION,

Respondents.

CASE NO. EQCV012716

RULING ON PETITION FOR  
JUDICIAL REVIEW

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The facts which bring the present action for judicial review before the Court are these. The petitioner, West Liberty Community School District, is a "public employer," and the respondent, West Liberty Education Association, is an "employee organization" within the meaning of Iowa Code Sections 20.3(11) and 20.3(4). During the course of their negotiations for a collective bargaining agreement for the 1999-2000 school year, a dispute arose whether a proposal advanced by the Association relating to employee evaluation procedures constituted a mandatory subject of bargaining as defined by Iowa Code Section 20.9. Since its proposal related to defining and implementing employee evaluation procedures and the right to grieve an evaluation, and both areas are subjects covered by sec. 20.9, the Association's position was that they were mandatory subjects. The District disagreed, contending the proposal made by the Association was a permissive subject only, arguing the proposal violated Section 20.7 of the Iowa Code, which reserves certain exclusive rights to the public employer, and further, that the proposal attempts to address "standards of performance," now an

exclusive management right because of an amendment to Iowa Code Section 279.

The District argued could not be compelled to negotiate the proposal. Because of the impasse, in July of 1999, the District petitioned the Public Employment Relations Board to resolve the dispute. The Public Employment Relations Board heard the matter on oral argument and briefs and on September 30, 1999, issued the following preliminary ruling:

RULING: Article XX is a mandatory subject of bargaining, with the exception of the phrase "and offer the opportunity for the employee to jointly devise suggestions for improving his/her professional performance" under "Employee Improvement," which is permissive.

On October 6, 1999, the District requested the Board issue a final ruling. In its Final Ruling filed February 3, 2000, the Public Employment Relations Board ruled that the entire proposal made by the Association was a subject of mandatory negotiation.

The Board stated as follows:

In our preliminary ruling, we found the phrase "and offer the opportunity for the employee to jointly devise suggestions for improving his/her professional performance," to be permissive. We did so believing, although neither party raised the argument, that it might interfere with the employer's right to determine who performs evaluations. See Northeast Community School District, Supra., 408 N.W.2d at 51. However, a preliminary ruling does not constitute final agency action and, upon further consideration, we conclude that a proposal allowing input in the remediation process from the employee who is being evaluated does indeed fall within the Section 20.9 topic "evaluation procedures" as it has been broadly interpreted by the Supreme Court. Accordingly, we conclude the entire proposal as set forth above is mandatorily negotiable.

The District thereafter filed the present petition for judicial review on February 29, 2000, pursuant to Section 17A.19. The matter was submitted to the Court by briefs and oral argument on December 6, 2000.

The Petition for Judicial Review filed by the District asks the Court to reverse the Board's Final Ruling and remand the case to the Board with directions to enter a new decision finding the proposal to be a permissive subject of bargaining.

The proposal made by the Association, a copy of which is attached to this ruling, provides a definition of "Evaluation," "Formal Evaluation," "Informal Evaluation," "Evaluation File," "Employee Improvement", and a suggested form to be used to give notice of a verbal informal evaluation.

The District contends that the portion of the Associations proposal which would require that the employee be given the opportunity to "jointly devise suggestions for improving his/her professional performance would interfere with the District's exclusive rights under Section 20.7 of the Iowa Code, because the language of the proposal impacts the District's ability to determine "standards of performance expected of school district personnel" which is exclusively reserved to the District through changes made by the Iowa Legislature in Section 279.14 in 1998.

Section 279.14 was amended by the Iowa Legislature in 1998. The existing statute was renumbered as subsection (1) and the legislature added an additional paragraph (2) so that the statute now reads as follows:

279.14. Evaluation criteria and procedures.

1. The Board shall establish evaluation criteria and shall implement evaluation procedures. If an exclusive bargaining representative has been certified, the Board shall negotiate in good faith with respect to evaluation procedures pursuant to chapter 20.

2. **The determination of standards of performance expected of school district personnel shall be reserved as a exclusive management right to the school board and shall not be subject to mandatory negotiations under Chapter 20. Notwithstanding Chapter 20, objections to the procedures, use or content of an evaluation in a teacher/termination proceeding brought before a school board in a hearing held in accordance with Section 279.16 or 279.27 shall not be subject to the grievance procedures negotiated in accordance with Chapter 20. A school district shall not be obligated to process any evaluation grievance after service of a notice and recommendation to terminate an individual's continuing teaching contract in accordance with Chapter 279.**

The District contends that the first sentence of the new subsection (2) makes

"standards of performance" an exclusive management right not subject to mandatory negotiations. The respondent, Public Employment Relations Board and Respondent West Liberty Education Association both disagree with the District's contention. Both argue that nothing the legislature did by way of amended Section 279.14 did away with the existing mandatory requirement negotiate employee evaluation procedures provided by Section 20.9, nor does it change existing Iowa case law in that regard.

In a declaratory ruling issued in June of 1999, the Public Employment Relations Board found that the legislature's amendment of Iowa Code Section 279.14(2) does not alter the requirements of Section 20.9 regarding mandatory negotiability of proposals relating to evaluation procedures or grievance procedures. Judicial review was sought in Polk County and the Board's ruling was affirmed. The Polk County judgment was not appealed.

The line of cases starting with Saydel Education Association versus Public Employment Relations Board, 333 N.W. 2nd, 486 (Iowa 1983), Aplington Community School District versus Public Employment Relations Board, 392 N.W.2d 495 (Iowa 1986), and Northeast Community School District, v. PERB, 408 N.W.2d (1987) established clearly that evaluation procedures necessarily include substantive criteria and must be given broad meaning (Saydel), that employee evaluation procedures and the criteria for those procedures is a mandatory subject of bargaining (Aplington) and that remediation is necessarily a part of the evaluation procedure and therefore also the subject of mandatory negotiation (Northeast). Those cases remain unmodified by the Supreme Court.

The two-step analysis to determine whether a proposal is a mandatory

bargaining subject under Iowa Code Section 20.9 is summarized in the case of Decatur County v. PERB, 564 N.W.2d 395 (1997). First, the proposal must come within the meaning of a Section 20.9 mandatory bargaining subject, and second, the proposal must not be illegal under any other provision of law. Several rules are applied to determine whether a proposal is a mandatory bargaining subject under Section 20.9. Mandatory subjects are construed narrowly and restrictively, and the first step in determining whether the proposal is a mandatory subject of bargaining is to determine if the proposal, "on its face, fits within a definitely fixed Section 20.9, mandatory bargaining subject." Decatur County v. PERB, 564 N.W.2d 395, 397.

Examining the proposal made by the Association in the case presently before the Court on its face requires no exhaustive analysis. The subject matter of the proposal is employee evaluation procedures. It seeks first to define formal evaluations, informal evaluations, evaluation file, and makes a proposal regarding employee improvement. It also makes provision for the right to grieve an evaluation and establish a form of notice to be used when a verbal informal evaluation is sought. Section 20.9 of the Iowa Code places both "evaluation procedures" and "grievance procedures" in the category of mandatory subjects of negotiation. The Iowa Supreme Court long ago confirmed that employee evaluation procedures, employee remediation (improvement) and grievance procedures fall within the purview of Iowa Code Section 20.9.

The District interprets Section 279.14(2) essentially as a further restriction on the scope of Iowa Code Section 20.9 so that any bargaining proposal which might infringe on the Board's exclusive right to determine "standards of performance" is now a permissive subject of bargaining only. It is not precisely clear from the District's Brief

and argument, however, how the proposal made by the Association interferes with its exclusive right to determine "...standards of performance expected of school district personnel..." The District's reasoning in that regard appears to be that "standards of performance" are the equivalent of "evaluation criteria," and therefore, the line of cases decided by the Supreme Court providing mandatory negotiation of evaluation "criteria" has been effectively overruled by Section 279.14(2). The District provides no legal authority to support its position. The legislature did not define what it intended to mean by "standards of performance," but the statute itself does not suggest that "standards of performance" and "evaluation criteria" are the same thing.


The District incorporates 9 of the 14 grounds under 17A.19(10), 1999 Code supplement, in its petition for Judicial Review in this case. None appear to the Court to be applicable to the Board's decision in this case. Clearly Chapter 20 grants the Board the authority to hear and decide this kind of case. The Board was not required to view a record containing evidence, so there is no issue regarding whether their decision is supported by substantial evidence. The Board's decision that the Association's entire proposal was a mandatory subject of bargaining is wholly consistent with both prior case law and decisions by the Public Employment Relations Board itself.

The District argues that the Board cannot define what "evaluation procedures" are supposed to be under Section 20.9 without reference to Iowa Code Section 279.14(2). The Board is not, however, statutorily charged with the duty to interpret the amendment to Iowa Code Section 279.14(2). For the Board to arrive at its decision, the Board needed only to do what it did, and that was to review the contested proposal in light of the applicable case law and its own prior decisions. It need not, and did not,

attempt to define what the legislature might have meant in Section 279.14(2) by the use of the term "standards of performance". Its decision, therefore, is not an irrational, illogical or a wholly unjustifiable application of law to fact within its discretion. The Board is not required to divine legislative intent on statutes it has no statutory obligation to interpret and should not be reversed in its action because it fails to interpret a statute unless it is clearly required by law to do so.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the decision of the Iowa Public Employment Relations Board in the above-captioned case is affirmed. Costs of this action are taxed to the petitioner, West Liberty Community School District.

Dated this 16<sup>th</sup> day of January, 2001.



J. Hobart Darbyshire  
Judge of the Seventh Judicial  
District of the State of Iowa

ARTICLE XX  
EMPLOYEE EVALUATION PROCEDURE

DEFINITIONS: An "Evaluation" shall mean a judgment of the quality of an employee's professional performance while that employee is performing his/her assigned duties for the School District during the regular work day.

A "Formal Evaluation" shall mean the written summary of the evaluation which results from one or more formal observations of an employee's professional performance in the classroom or equivalent working place. The formal evaluation may include information beyond the scope of the actual classroom or equivalent observation and shall serve as a summary of the employee's overall performance. Formal evaluation of an employee's professional performance of extracurricular activities duties or activity supervision duties is not required. Any formal evaluation that is in fact made of extracurricular activities duties or activity supervision duties shall serve both as a summary of the employee's performance of the particular extracurricular activities duty or activity supervision duty and as a portion of the employee's overall performance.

An "Informal Evaluation" shall mean the written summary of the evaluation which results from any classroom or other observation, other than a formal observation, of an employee's professional performance.

An "Evaluation File" shall mean the evaluation file maintained by the building principal or immediate supervisor which contains the formal evaluations and information evaluations of an employee.

EMPLOYEE IMPROVEMENT: If a formal evaluation or informal evaluation indicates that an employee's professional performance is unsatisfactory, the Evaluator shall provide a list of expected improvements and offer the opportunity for the employee to jointly devise suggestions for improving his/her professional performance. A copy of the list of expected improvements and the suggestions for improvement will be signed by both parties and placed in the employee's permanent file. The list of expected improvements and suggestions shall not be considered all-inclusive. The Evaluator shall do a follow-up at the end of a two (2) month period to see if said employee has improved his/her professional performance. The Evaluator will then meet with the employee for the second time to discuss his/her professional performance. The Evaluator will make a notation in the employee's permanent file stating the date of the follow-up, any improvements that were made and improvements still needed. It will be determined at the conclusion of the first follow-up discussion, whether or not a further follow-up is necessary. If a second follow-up is deemed necessary, said follow-up will be done at the end of a one-month period. If after the second follow-up, performance is still deemed unsatisfactory, the employee has the right to grieve said evaluation.

FORM OF NOTICE OF VERBAL INFORMAL EVALUATION: The form for the written notice of verbal informal evaluation shall be substantially as follows: